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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 683

GLADYS W. SIMPSON, *Petitioner*,

v.

THE UNITED STATES OF AMERICA, *Respondent*.

PETITIONER'S REPLY BRIEF

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The attention of the Court is called to the Findings of Fact and Conclusions of Law in the case of *Grace P. Reed* v. *The United States*, U. S. District Court, West. Dist. Ky., Civ. Act. No. 3625, Jan. 16, 1959. The case was brought to the attention of Counsel for Petitioner on March 9, 1959, when his office received Commerce Clearing House, Inc. 1959 Standard Federal Tax Report No. 12, dated March 4, 1959, which reports the Findings and Conclusions of the Court in paragraph 9264 at page 71,565.

The *Reed* case justifies this Reply to Respondent's Brief for the United States in Opposition to the Petition in the instant case.

For purposes of the petition in the instant case, the *Reed* case is not just one more case, the 36th case, in which a court has decided that a gratuitous payment to a widow like the payment to petitioner in the instant case, is a gift and as such is specifically excludible from her gross income for Federal income tax purposes. The *Reed* case is significant because the payment to the widow there in question was made by her deceased husband's employer in the taxable year 1956 and therefore presented the question whether the payment was a gift excludible from gross income under Section 102(a) of I.R.C. 1954. In holding that the payment to Mrs. Reed was a non-taxable gift, the District Court stated the following conclusion of law, among others:

> "4. Section 102(a) of the Internal Revenue Code of 1954 contains the provision (as did the comparable section, 22(b)(3), of the 1939 Code) that gross income does not include amounts received as gifts; and the meaning of that provision is not changed by the provisions of section 101(b) of the 1954 Code. It is clear that the purpose of the latter section of the 1954 Code is to eliminate the requirement (contained in the comparable section, 22(b)(2), of the 1939 Code) that certain employee death benefits must be paid pursuant to a contractual obligation in order for such benefits to quality for a $5,000 exclusion from gross income. No part of the aforesaid gift to Grace P. Reed is, by reason of section 101(b), includable in taxable income; and such gift is not subject to the limitation of the $5,000 exclusion provided in that section."

Here is support for Petitioner's argument in the instant case that the Revenue Act of 1954 did not settle the law in the respect questioned herein. See Peti-

tion, pages 9 to 17. Respondent's Brief in Opposition to the Petition states that petitioner's concern with Section 101(b) of the Internal Revenue Code of 1954 "is difficult to understand" (page 7) and it concludes that petitioner's argument concerning the same is "irrelevant here" because "The only issue in this case is whether the payment received by petitioner was excludable from her gross income as a gift under Section 22(b)(3) of the 1939 Code." (Page 8). Of course, petitioner's argument was not presented as an argument on the merits of her case but was presented as a reason why the Court should grant her petition for certiorari, and as such her argument is indeed highly relevant. The unsettled state of the applicable law under the 1939 Code continues under the 1954 Code. The District Court in the *Rodner* case (Pet. pages 5-6) expressed the labored dictum that the 1954 Code settled the law,—subjected "gifts in the form of death benefits" to the Section 101(b) $5,000 limitation. The District Court in the *Reed* case briefly decided that this isn't so,—that such gifts are excludable from gross income under Section 102(a) of the 1954 Code.

To argue in the face of such an unsettled state of the law before and since the effective date of the 1954 Code, as does Respondent in the first paragraph of its Argument on page 6 of its Brief in Opposition, that the instant case presents "no question of general importance," is as untenable a proposition as the points and authorities cited in support thereof by Respondent are utterly irrelevant. The instant case presents no question whether the payment to petitioner was "income" includible in "gross income" as defined in Section 22(a) of the 1939 Code. As Respondent itself

emphasizes, and correctly so, on page 8 of its Brief, "The only issue in this case is whether the payment received by petitioner was excludable from her gross income as a gift under Section 22(b)(3) of the 1939 Code." Hence, the *Glenshaw Glass Co.* case cited by Respondent is utterly irrelevant. So is the *Jacobson* case cited by Respondent utterly irrelevant. Respondent obviously isn't merely seeking a narrow construction of the word "gift" as it is used in Section 22(b)(3) of the 1939 Code. Respondent is seeking a nullification by the courts of the specific exclusion provided by Congress in that section of the 1939 Code and in the comparable section of the 1954 Code, namely Section 102(a), in all cases of gratuitous payments to widows like the payment to petitioner in question. The Courts in 36 cases have steadily held that such payments are gifts excludible from the widows' gross incomes as provided by the clear language of the statute. In only *one* analogous case, the instant case, has a court decided that such payment constitutes taxable income to the widow.

Respondent contends that there is no conflict between the decision of the court below in the instant case and the decisions of the C.A. 6th and the C.A. 4th in the *Bankston* and the *Bounds* cases, because the decision in the instant case is distinguishable both on the facts and on Respondent's "theory that the petitioner received compensation which her husband earned prior to his death knowing that if he remained in the employ of the corporation it would undoubtedly make the payment to his widow pursuant to a long-standing, formalized plan." So, too, Respondent thinks the instant case is distinguishable on the facts from the 18 District Court cases and the 15 Tax Court

cases cited or referred to on pages 4-5 of the Petition. (Resp. Br. pages 6-7) *Petitioner contends that the only material distinction is that the payments to the widows in the other 36 cases were held by the Courts to be tax-free gifts, while the C.A. 7th held that the payment to her is taxable income.*

Finally, in the last paragraph of its Brief, on pages 8 to 9, Respondent adds to the significance of Rev. Rul. 55-609, as Petitioner sought to point it out on pages 10 and 16 of the Petition. Petitioner did not express or imply that Rev. Rul. 55-609 was merely the work of supererogation, as the peremptoriness of the statutory provision quoted on page 9 of Respondent's Brief might suggest. The significance of Rev. Rul. 55-609 is, as was adverted to at the top of page 10 of the Petition, that it drew attention to a positive indication that Congress was aware of I.T. 4027 (quoted from in part on page 12 of the Petition), and did *not* approve of it. Indeed, on page 9 of its Brief Respondent says that the significance of the statutory provision is that Congress thought that the death gratuity payments to widows or families of its deceased members "would be taxable under the Internal Revenue Code," so, "To forestall this, Congress provided specifically that such payments should be held to be gifts."

WHEREFORE, petitioner continues her prayer that a writ of certiorari issue to review the decision of the Court of Appeals for the Seventh Circuit.

Respectfully,

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